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PROMOTION AND PROTECTION OF HUMAN RIGHTS

STATUS OF THE INTERNATIONAL COVENANTS ON HUMAN RIGHTS

Written statement submitted by Human Rights Advocates, Inc., a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[7 December 1998]

GE.99-10504 (E)

A call upon states to work toward abolishing the juvenile death penalty

1. Human Rights Advocates (HRA) supports and encourages the work of the Special Rapporteur on extrajudicial, summary or arbitrary executions in the effort to abolish the death penalty. To date, 103 countries have either abolished the death penalty for all crimes (63 countries), abolished it for ordinary crimes (16 countries), or abolished it de facto (24 countries). 1/ HRA recommends that States continue to cooperate with the Special Rapporteur and strive for worldwide abolition of capital punishment, especially as it pertains to juveniles.

2. Since 1990, six countries have executed persons who were under the age of 18 at the time of their capital offence. These countries are Iran, Nigeria, Pakistan, Saudi Arabia, the United States and Yemen. 2/ Iran, Nigeria, Pakistan, Saudi Arabia and Yemen have executed a total of nine juvenile offenders between them. 3/

3. Since only six countries are currently enforcing the juvenile death penalty, 4/ a practice prohibited by the International Covenant on Civil and Political rights (ICCPR) and the Convention on the Rights of the Child (CRC), the prohibition of the juvenile death penalty should be customary international law. This conclusion is bolstered by the fact that the prohibition against applying the death penalty to juvenile offenders is non-derogable in those treaties. 5/ Furthermore, most countries that have not abolished the death penalty have done so for offenders younger than 18 years of age.

Iran

4. Iran ratified the ICCPR in 1976 and the CRC in 1994. To date, it is unclear how many juvenile offenders are on death row, but it has been documented that at least one juvenile offender was executed in 1990 and three in 1992. 6/ Amnesty International reported the story of a 15-year-old girl who was sentenced to death in 1993, but at the time of its May 1995 report, it was unknown whether or not she had been executed. 7/ Iran has been and continues to be reluctant to provide detailed information to the Special Rapporteur on extrajudicial, summary or arbitrary executions. 8/ The Special Rapporteur in his report to the Commission in 1996, requested that the Government provide official information on the number of executions that have been carried out since the beginning of Iranian year 1373. 9/ In 1997, Iran finally responded to some of the Special Rapporteur's inquiries, but none of the information related to the juvenile death penalty. 10/ In March 1997, the Special Rapporteur did not receive a response to an urgent appeal sent on behalf of two 16-year-old offenders sentenced to death for committing murder. 11/ From January 1997 to September 1997, the Special Rapporteur received reports regarding the imposition of the death penalty on minors, 12/ a matter of considerable concern.

Nigeria

5. Although Nigeria has ratified the ICCPR, Nigeria violated the ICCPR by hastily and publicly executing in July 1997 a 17 year-old who had committed armed robbery at the age of 15. 13/ The juvenile offender was executed only

two months after he was sentenced to die. 14/ In 1997, a second juvenile, convicted of robbery, was also given a death sentence, but it was commuted to life imprisonment. At this point, it is unknown how many juvenile offenders are on death row.

Pakistan

6. Pakistan has yet to ratify the ICCPR, but ratified the CRC in 1990. It is unknown how many juvenile offenders are currently on death row in Pakistan, but the last known juvenile to be executed, in 1997, had received a death sentence in 1991 for an armed robbery and triple murder he committed at the age of 14 years. 15/ Currently, Pakistan has no minimum age for being sentenced to death. However, in 1995, the Child Offenders Bill was introduced into Parliament, which would set 16 as the minimum age for death penalty eligibility. 16/ Although this is a step in the right direction, the legislation still falls short of the standard set by the ICCPR and the CRC, which do not allow the imposition of the death penalty to persons under 18 at the time of the offence. In his 1998 report, the Special Rapporteur noted with concern that Pakistan had not provided any replies to his communications for the preceding three years. 17/

Saudi Arabia

7. Saudi Arabia has not yet ratified the ICCPR, but ratified the CRC in 1996, without reservations. Since Saudi Arabia is secretive with its statistics, it is unknown how many juveniles have been executed in the past decade, or how many are currently sitting on death row. However, records indicate that at least one juvenile offender was executed in 1992, for blasphemy, 18/ and that those awaiting execution could include a group of Pakistani nationals, including children as young as five, held in secrecy on drug offences. 19/ In his 1996 report, the Special Rapporteur on extrajudicial, summary or arbitrary executions noted with regret that he had not received any replies from the Government to his inquiries on these issues. 20/

United Arab Emirates

8. The United Arab Emirates ratified the CRC in 1997, without reservations, but it has not yet ratified the ICCPR. The country still retains national legislation which allows minors to be eligible for the death penalty. 21/ It is unknown how many juvenile offenders are on death row. The Special Rapporteur on extrajudicial, summary or arbitrary executions regretfully had not received a reply from the Government at the time of his 1996 report. 22/

United States

9. The United States ratified the ICCPR in 1992 with a reservation to article 6. 23/ The United States is one of only two countries that have not ratified the CRC. 24/ The United States is, by far, the worst offender of human rights, with 12 juvenile executions since the death penalty was reinstated in that country in 1976. 25/ In 1998 alone, three juvenile offenders were executed in the United States, the only country in 1998 to execute a juvenile offender. 26/

10. Currently, there are 74 juveniles on death row in the United States. 27/ Two thirds of these juveniles belong to minorities and nearly two thirds of the victims were white. 28/ Twenty-four of the 38 states in which the United States authorizes the use of the death penalty, and the Federal Government, set the minimum age for death penalty eligibility below 18. 29/ The United States Supreme Court ruled that 15-year-olds were too young to receive a capital sentence, but has expressly allowed juveniles of 16 and 17 years of age to be sentenced to death. 30/

11. Twenty-seven of the 74 (36 per cent) juvenile offenders awaiting death reside in Texas. 31/ Twenty-three of the 27 belong to minorities. 32/ The typical offender on death row in Texas is either an African American or Hispanic male who committed the crime at age 17 against a white adult victim. 33/

12. In the past 15 years, the overall death row population in the United States has risen by 189 per cent and the number of juvenile offenders under a death sentence has risen by 124 per cent. 34/ Astoundingly, the increase for 1998 alone was 24 per cent overall and 21 per cent for juveniles. 35/

13. Without a doubt, the United States is rapidly moving away from the international goal of abolishing the death penalty. 36/ Furthermore, the United States has ignored the Commission on Human Rights resolution 1998/8 that specifically called upon all States to ratify the Second Optional Protocol to the ICCPR, which aims at abolishing the death penalty. 37/

14. Since the fifty-fourth session of the Commission, the United States has clearly neglected to follow the Commission's call to reduce the number of offences that are eligible for capital punishment. 38/ In 1998, the United States Congress considered legislation that would expand the crimes in which juveniles in federal court could be prosecuted as adults, thus subjecting more juveniles to the death penalty. 39/ Additionally in 1998, the State of Mississippi expanded capital offences for juveniles to include murders that occur on school property. 40/

Yemen

15. Although Yemen ratified the ICCPR in 1993, Yemen executed a juvenile who was merely 13 at the time of his offence. 41/ Even though Yemen instituted a new Model Penal Code in 1994, which raised the minimum age for death penalty eligibility to 18, a juvenile offender's death sentence from 1995 was upheld by the Supreme Court and was ratified by the President in 1997. 42/ The juvenile was 16 at the time he committed the offence. Theoretically, Yemen has moved in the right direction towards abolishing the juvenile death penalty. However, it is unknown how many other juvenile offenders are on death row. Unfortunately, Yemen has not replied to any of the communications sent by the Special Rapporteur during the past three years. 43/

Recommendations

16. **HRA recommends that the Commission encourage Iran, Nigeria, Pakistan, Saudi Arabia, the United Arab Emirates, the United States of America and Yemen**

to stop defying the international norms regarding the juvenile death penalty. Those countries should be required to submit reports to the Commission every year that detail their progress on efforts aimed at prohibiting the juvenile death penalty.

17. HRA recommends that the Commission request those countries to submit specific information on the following:

Efforts to educate its public about the juvenile death penalty and the international treaties against it;

Progress that each country is making in setting the statutory minimum age limit at 18 for death penalty eligibility and in commuting or overturning current juvenile death sentences;

Reasons as to why each country is not working towards abolishing the juvenile death penalty, if the country is not working towards prohibiting it.

18. Additional specific information that could be requested of Governments, with federal/state or provisional divisions, includes:

Detailed reports on steps taken to inform and educate each of its states and its citizens about the requirements of the ICCPR and the prohibition of the juvenile death penalty;

Efforts towards taking a leadership role as to its states/provinces;

Efforts to pass national legislation that conforms to the international treaties and encourages individual states/provinces to implement their own legislation to prevent the execution of juveniles.

19. HRA recommends that the Commission request all States, particularly Iran, Pakistan, Saudi Arabia, the United Arab Emirates and Yemen to cooperate fully with the efforts of the Special Rapporteur on extrajudicial, summary or arbitrary executions and provide all information requested. Additionally, the Commission should commend the United States for making information available concerning its use of the juvenile death penalty.

20. HRA recommends that the Commission urge Pakistan, Saudi Arabia and the United Arab Emirates to ratify the ICCPR without reservations.

21. HRA recommends that the Commission urge the United States to revoke its reservation to article 6 of the ICCPR and ratify both the Second Optional Protocol to the ICCPR and the Convention on the Rights of the Child without reservations.

22. HRA recommends that the Commission request all States to impose a moratorium on the execution of juvenile offenders. HRA further recommends that those States who have not executed juveniles in the past few years should be encouraged to change their national legislation to reflect their prohibition of the juvenile death penalty.

Notes

1/ Amnesty International, Death Penalty News June 1998, AI Index: ACT 53/03/98, June 1998.

2/ Amnesty International, Juvenile Offender Facing Execution in Virginia - A Step Backwards, AI Index: ACT 51/76/98, October 1998.

3/ Idem.

4/ In Amnesty International's report on the juvenile death penalty (AI Index: ACT 50/05/95), the following countries were listed as having executed juveniles since 1985: Bangladesh, Iran, Iraq, Nigeria, Pakistan, Saudi Arabia, the United States and Yemen. It is not recorded in this or other recent reports whether the laws have been changed in Bangladesh or Iraq, but no reports indicate that juveniles have been executed in those countries in the past 10 years. If the laws still allow for juvenile eligibility for the death penalty, HRA recommends that the Commission urge those countries to implement laws setting 18 as the minimum age for death penalty eligibility.

5/ Connie de la Vega and Jennifer Brown, Can a United States Treaty Reservation Provide a Sanctuary for the Juvenile Death Penalty? 32 U.S.F.L. Rev. 735, 760 (1998).

6/ AI Index: ACT 50/05/95, pp. 8-9.

7/ Amnesty International, Iran: Official Secrecy Hides Continuing Repression, AI Index: MDE 13/02/95.

8/ Commission on Human Rights, Fifty-second session. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Bacre Waly Ndiaye, E/CN.4/1996/4, para. 265.

9/ Report of the Special Representative of the Commission on Human Rights on the situation of human rights in the Islamic Republic of Iran, E/CN.4/1996/59, para. 43.

10/ Commission on Human Rights, Fifty-fourth session, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, E/CN.4/1998/68/Add.1.

11/ Idem.

12/ Idem.

13/ Amnesty International, Death Penalty News: A Summary of Events on the Death Penalty and Moves Towards Worldwide Abolition, September 1997.

14/ Idem.

15/ Amnesty International, Country Report: Pakistan - the Death Penalty, AI Index: ASA 33/10/96, September 1996.

16/ Idem.

17/ Commission on Human Rights, Fifty-fourth session, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, (E/CN.4/1998/68/Add.1.

18/ AI Index: ACT 50/05/95, pp. 8-9.

19/ Amnesty International, AI Index: MDE 23/07/97, July 1997.

20/ Commission on Human Rights, Fifty-second session, Report of the Special Rapporteur on extrajudicial, summary, or arbitrary executions, E/CN.4/1996/4.

21/ Idem.

22/ Idem.

23/ The Human Rights Committee concluded that the reservations are incompatible with the ICCPR and recommended that they be withdrawn. See, Consideration of reports submitted by States Parties under article 40 of the Covenant, CCPR/C/79/Add.50 (1995), para. 14. In 1998, the Special Rapporteur reiterated the fact that the United States reservation should be considered void. Amnesty International, United States of America: Rights for All, on the Wrong Side of History: Children and the Death Penalty in the USA, AI Index: AMR 51/58/98, October 1998. Further, in its resolution 1998/8 the Commission on Human Rights expressed deep concern that several countries impose the death penalty in disregard of the limitations provided for in the ICCPR and the CRC.

24/ Amnesty International, Statement by Pierre Sane, Secretary-General, Amnesty International, AI: AMR 51/73/98, October 1998.

25/ Streib, Victor, Death Sentences and Executions for Juvenile Crimes, January 1973-October 1998, October 1998, pp. 3 and 4, table 1.

26/ Streib pp. 1 and 4, table 1.

27/ Idem, pp. 13-14.

28/ Idem.

29/ Idem, p. 5.

30/ Thompson v. Oklahoma, 487 U.S. 815 (1988) and Stanford v. Kentucky, 492 U.S. 361 (1989).

31/ Streib, p. 13.

32/ Idem, pp. 31-34, Appendix B.

33/ Idem.

34/ Idem, p. 13.

35/ In 1997, the total increase of the death row population over a 14-year period was 165 per cent for the overall population and 103 per cent for juvenile offenders. See Streib, Victor, Death Sentences and Executions for Juvenile Crimes Over the Last Quarter Century, 1973-1997, January 1998, p. 4, table 1.

36/ Several countries over the past few years have adopted the Second Optional Protocol to the ICCPR, which abolishes the death penalty, while the United States has failed to adopt the Second Optional Protocol.

37/ Commission on Human Rights resolution 1998/8, para. 2.

38/ Idem, para. 4.

39/ United States of America Congress, House of Representatives Bill 3 and Senate Bill 10.

40/ AI Index: AMR 51/58/98, p. 12.

41/ Amnesty International, Ratification without Implementation: The State of Human Rights in Yemen, AI Index: MDE 31/01/97, p. 28, March 1997.

42/ Idem, pp. 26-28.

43/ Commission on Human Rights, Fifty-fourth session, Report of the Special Rapporteur on extrajudicial, summary, or arbitrary executions, E/CN.4/1998/68.